IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1058 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P.M SHUKLA

Versus

M/S SANTOSH HARDWARE

Appearance:

MR BB NAYAK for Petitioner

MR DF AMIN for Respondent No. 1 TO 6

MR SJ DAVE, Ld. APP for Respondent No. 7

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/06/2000

ORAL JUDGEMENT

1. Heard Mr.B.B.Nayak, learned advocate for the petitioner, Mr.D.F.Amin, learned advocate for the respondents No.1 to 6 and Mr.S.J.Dave, learned APP for the respondent No.7-State.

2. Respondent No.1 is a partnership firm carrying on its business at Godhra and respondent Nos. 2 to 6 are the partners of respondent No.1 firm. Respondent No.1 firm filed its return of income for the assessment year 1982-83 and the assessment was completed by the Income Tax Officer on 31.3.1984 under Section 144 of the Income

Tax Act, 1961, taking into consideration the duplicate books of accounts seized by the Sales Tax Department, wherein the total income of the assessee firm was determined and has not accepted the income shown by the respondent No.1 firm but has determined more income than the income shown by the respondent no.1. The Income Tax Officer thereafter passed order under section 271(1)(C) on 19.2.1986 levying minimum penalty of Rs.23,540/-. The Commissioner of Income Tax (Appeals), Baroda, vide order dated 29.10.1987 confirmed the penalty order. Thereafter on 26.2.1990 a complaint was filed in the court of Chief Judicial Magistrate, Godhra, being Criminal Case No.1009/90 for offence under section 276(C)(1) and section 277 of the Income Tax Act, 1961 against the respondent No.1 firm and its partners.

3. On receiving the said complaint, the learned Chief Judicial Magistrate, Panchmahals at Godhra has issued the process. Thereafter respondents have appeared through their learned advocates and they have pleaded guilty. In pursuance of that, the learned Chief Judicial Magistrate by his judgment and order dated 6.5.1991 convicted the accused for the offence alleged against them and sentenced respondents No.2 to 6 till rising of the court and imposed fine of Rs.250/- each on all the accused, failing which ordered them to undergo simple imprisonment for 12 days.

4. Against that judgment and order, the present petition has been filed by the petitioner prayed for quashing and setting aside the judgment and order dated 6.5.1991 passed by the learned Chief Judicial Magistrate, Panchmahals at Godhra in Criminal Case No.1009 of 1990 mainly on the following grounds:

> "That the learned Magistrate erred in law in trying the case in a summary way as provided under section 260 of the Code of Criminal Procedure, 1973. The learned Magistrate ought to have appreciated that since the offence under section 193 and section 199 of IPC was punishable with imprisonment of either description for a term which may extend to three years and fine, the offence being punishable with imprisonment for a term exceeding two years he had no power to try the case in a summary way as provided under section 260 of the Code of Criminal Procedure. "

5. I have heard learned advocates for the respective parties and also perused the record and proceedings which have been shown to me by learned advocates for the

respective parties. It is established from the record and proceedings itself that the complaint in question has been filed by the complainant on 26.2.1990 for which offence alleged to have been committed by the respondents No.1 to 6 which has come to the knowledge by the department on 31.3.84 so admittedly complaint has been filed after a period of six years. Arguing the same, learned advocate for the respondents No.1 to 6 has drawn my attention towards sec.468 of Cr.p.c. which read as under:

"Sec.468 - Bar to taking cognizance after lapse of the period of limitation :-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

6. As per section 468(2)(c) three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years then complaint is required to be filed within the period of three years. Admittedly, in this case complaint is not filed by the complainant within the period of three years and, therefore, complaint is not required to be quashed on that ground and even otherwise also question of limitation is involved in this case and after the period of 14 years if matter will be remanded back then purpose will not survive.

In the facts and circumstances of the case, I do not see any reason to interfere with the judgment and order passed by the court below and hence this petition is required to be rejected. Rule is discharged.

(R.P. Dholakia, J.)

syed/